

General Information Letter: Petition to use alternative apportionment method cannot be granted without some showing that statutory apportionment formula fails to properly reflect the extent of the taxpayer's business activity in Illinois.

February 28, 2001

Dear:

This is in response to your letter dated February 20, 2001, in which you request permission to apportion business income of xxxxxxxxxxxxxxxxxxxxxx using only the property factor rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us. For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

This letter serves to request an alternative apportionment method in lieu of the "Sales" method to determine "Base Allocable Income". Since its inception in 1980, xxxxx xxxxxxxxxxxxxxxxxxxxxx has used the "Property Factor" apportionment formula, which more accurately reflects our business activity in Illinois.

The partnership's only Illinois business activity is a farm that produces corn and soybeans. xxxxxxxxxxxxxxxxxxxxxx non-Illinois business activities include commercial leasing, oil and gas ventures, securities investments and various venture-capital activities.

Response

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at www.revenue.state.il.us.

Your petition does not contain any evidence showing that the apportionment formula prescribed under Section 304(a) of the IITA does not fairly represent the extent of the business activity of xxxxx xxxxxxxxxxxxxxxx in Illinois, nor does it contain any evidence that the use of the property factor only will more accurately reflect the extent of its business activity in Illinois. Your petition cannot be granted until it such evidence is provided.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. A petition filed February 20, 2001 will allow a taxpayer to use the requested method on original returns due on or after June 20, 2001, if granted.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax